Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122

COMMENTS OF
PUBLIC KNOWLEDGE, MEDIA ACCESS PROJECT, NATIONAL HISPANIC MEDIA COALITION, AND NEW AMERICA FOUNDATION'S OPEN TECHNOLOGY INITIATIVE

Public Knowledge, Media Access Project, National Hispanic Media Coalition, and New America Foundation's Open Technology Initiative ("Commenters") submit these reply comments in the above-captioned docket. As Commenters demonstrate below, text messaging is properly classified as a Title II telecommunications service. At a time of declining funding levels for the Universal Service Fund ("Fund"),[1] it would be irresponsible for the Bureau to exclude text message revenues from contributions. Such exclusion would immediately reduce current contributions and invite gamesmanship to reduce those contributions further in the future.[2]

Contrary to the assertions of other comments in this proceeding, text messaging is not simply mobile email. The storage capability of text messaging is no more than incidental to the service. It does not rely on protocol conversions for fundamental operation. Finally, the fact that you can access information services by way of the text

[1] Public Notice, *Proposed Third Quarter 2011 Universal Service Contribution Factor*, CC Docket No. 96-45; DA 11-1051 (June 14, 2011).
[2] Comments of Public Knowledge and National Hispanic Media Coalition in Universal Service Contribution Methodology, WC Docket No. 06-122 at 1-2 (June 6, 2011) ("PK/NHMC Comments").

messaging telecommunications service does not change the status of the underlying service.

Text Message Services Only Rely Incidentally on Storage

Text messaging is not "equivalent to email."[3] It has not become "effectively conjoined and inseverable"[4] from email. Nor is it "indistinguishable from email."[5] As detailed in comments from Public Knowledge and the National Hispanic Media Coalition, text messages differ from email in ways highly relevant to this analysis.

Text messages fundamentally differ from email because text messages do not include a data storage feature. While a message may be stored incidentally en route to delivery, that storage is not central to the functionality being offered to text messaging customers.

Consider the data storage offered by an email service provider. Providers store email messages on email servers for customer access. Customers can then access those stored messaged in a number of different ways whenever they see fit. In fact, customers can simultaneously access those messages in multiple ways. They can access a message on a desktop client and then access the same message on a mobile device hours, days, even years later. Customers control how they access the message and when (if ever) the message is deleted.

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[3] Comments of Verizon Wireless in Universal Service Contribution Methodology, WC Docket No. 06-122 at 1 (June 6, 2011) ("Verizon Wireless Comments").
[4] *Id.* at 5.
[5] Comments of AT&T Inc. in Universal Service Contribution Methodology, WC Docket No. 06-122 at 3 (June 6, 2011) ("AT&T Comments").

This behavior stands in stark contrast to customer experience with text messaging. Text messages are delivered to a consumer's mobile device as soon as is practicable.[6] They are then deleted as the service provider sees fit.[7] Although the service provider may decide to store the messages to facilitate law enforcement access,[8] those messages are not available to the customer. Text messages are sent to a consumer's device once and then can never be accessed again from the server.[9] Incidental storage of messages en route to final, one time, network-controlled delivery does not transform text messaging into email or an information service.

Text Messaging Does Not Rely on Protocol Conversions

Although protocol conversion can be used to transmit text messages to other services, text messaging does not rely on protocol conversion for its underlying operation. As USAC correctly points out, in a text message "plain text is sent and plain text is received."[10] Text messages originate and terminate on a mobile device using the short message peer-to-peer protocol ("SMPP").[11] Users can exchange text messages that do not require any protocol conversion at all.[12]

Of course, it is possible to use protocol conversion to connect text messaging with other services. Conversion is required to connect text messages with email or instant

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[6] *See* Verizon Wireless Comments at 4.
[7] *Id.*
[8] *Id.*
[9] *See* Appendix A.
[10] Letter from Richard A. Beldon, Chief Operation Officer, USAC, to Sharon Gillett, Chief, WCB, FCC, WC Docket No. 06-122 at 2 (Apr. 26, 2011).
[11] *See* Comments of T-Mobile USA, Inc. in Universal Service Contribution Methodology, WC Docket No. 06-122 at 4 (June 6, 2011) ("T-Mobile Comments").
[12] *Id.* at 9.

messaging.[13] However, the fundamental service of text messaging is not to connect messages with email or IM. Instead, it is to transmit text messages.

Text Messaging Can be used to Access Information Services, But is not an Information Service

In its comments, CTIA accurately describes the relationship between text messaging and information services thusly, "SMS supports a host of other applications, all of which are 'information services,' such as the download or transfer of ringtones, pictures, other graphics and information, and animations."[14] It is undeniable that text messaging can be used to access search results, sports scores, weather reports, movie times, and other types of information.[15] It is likely that these services could be accurately classified as information services.

However, the diversity of services accessible via text message also serves to highlight its fundamental, general-purpose telecommunications service nature. The telecommunications service of text messaging can be used to access any number of information services. Similarly, voice calling can be used to access recordings of the time, weather, movie times, sports scores, and even jokes. That does not somehow transform voice calling into an information service.

Conclusion

This proceeding is only the most recent illustration of the costs imposed by the Commission's decision to ignore the central position that text messaging has assumed in

[13] Comments of CTIA – The Wireless Association in Universal Service Contribution Methodology, WC Docket No. 06-122 at 11 (June 6, 2011).
[14] *Id.* at 5.
[15] *See* T-Mobile Comments at 8.

our communications system. Excluding text messaging from Fund contributions is both incorrect and damaging to the Fund's future financial viability. The Bureau should take this opportunity to recognize that text messaging is a Title II telecommunications service.

Respectfully Submitted,

Public Knowledge
Media Access Project
National Hispanic Media Coalition
New America Foundation's Open Technology Initiative

/s Michael Weinberg
Staff Attorney
Public Knowledge

June 20, 2011

APPENDIX A

mehan_j mehan jayasuriya
@ATTCustomerCare I just deleted a text message from my phone (iPhone 4). Is there any way to re-download it?
13 Jun

in reply to @mehan_j ↑

@ATTCustomerCare
Molly

@mehan_j Sorry but If the message was deleted it can not be retrieved. Wish I had better news. :(

13 Jun via Attensity ☆ Favorite ⇄ Retweet ↩ Reply

Mentioned in this Tweet

mehan_j mehan jayasuriya
director of outreach and new media at @PublicKnowledge // freelance pop music writer & photographer // lover of cheeseburgers & wooly mammoths

mweinbergPK Michael Weinberg
@VZWSupport I just deleted a text message from my phone (droid2). Is there any way to re-download it?
13 Jun

in reply to @mweinbergPK ↑

@VZWSupport
VZW Support

@mweinbergPK No we dont save text mess on our server. There are svrl apps that back up text mess in the market place for in the future. ^JL

14 Jun via Radian6 ☆ Favorite ↻ Retweet ↩ Reply